RECORD.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 15,518

TAX REVIEW

MAY SEED AND NURSERY COMPANY,
PETITIONER,

VS.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.

PETITION TO REVIEW DECISION OF THE TAX COURT OF THE UNITED STATES

FILED FEBRUARY 17, 1956

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,518

TAX REVIEW.

MAY SEED AND NURSERY COMPANY,
PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.

PETITION TO REVIEW DECISION OF THE TAX COURT OF THE UNITED STATES.

FILED FEBRUARY 17, 1956.

INDEX.

	Original	Print
Docket Entries in United States District Court	1	1
Petition of May Seed and Nursery Company	3	3
Exhibit A, Notice to May Seed and Nursery Company of deficiency in Tax, May 15, 1953	7	6
Statement	8	7

	Original	Print
Exhibit B, Statement relating to Excess Profits Tax computed after Application of Section 722 by May Seed and Nursery Company for the Fiscal Year ended June 30, 1943	12	10
Exhibit C, Application of May Seed and Nursery Company and/or Earl E. May Seed Company for relief under Section 722 of Internal Revenue Code	13	11
Answer of Commissioner of Internal Revenue	26	29
Stipulation of Facts	29	31
Exhibit 1-A, Notice to May Seed and Nursery Company of deficiency in Tax, May 15, 1953, Recital that Same is attached to Petition	33a	34
Exhibit 3-C, Statement relating to Excess Profits Tax computed after Application of Section 722 by May Seed and Nursery Company for the Fiscal Year ended June 30, 1943. Recital that Same is attached to petition	33a	34
Exhibit 2-B, Application of May Seed and Nursery Company and/or Earl E. May Seed Company for relief Section 722 of Internal Revenue Code	34	35
Exhibit A, Statement relating to Base Period Earnings of Earl E. May Seed Company per Tax Returns for the Years 1937 to 1940	44	48
Exhibit 4-D, Letter from Internal Revenue Agent in Charge to May Seed and Nursery Company, October 26, 1948	48	55
Exhibit 5-E, First Page of Transmittal Letter of Internal Revenue Agent in Charge	49	56
Exhibit 6-F, Agreement of May Seed and Nursery Company to Amount of Constructive Average Base Period Net Income determined under Section 722 of Internal Revenue Code	50	57
Exhibit 7-G, First Two Pages of Statement of Excess Profits Tax Council relating to May Seed and Nursery Company	51	58
Exhibit 8-H, Letter from Excess Profits Tax Council enclosing Decision	53	61
Exhibit 9-I, Letter from Internal Revenue Agent in Charge to May Seed and Nursery Company, June 25, 1952	54	62
Statement	55	63
Transcript of Proceedings	59	65
Caption	59	65
Appearances of Counsel	59	66
Proceedings	61	66
Joint Exhibit 10-J, Letter from Internal Revenue Agent in Charge to John S. Odin, July 2, 1952, Memorandum as to	68	71
Joint Exhibit 11-K, Letter from Earl A. Hoffman, Member of Excess Profits Tax Council, to Mr. Busby, July 9, 1952, Memorandum as to	69	71

	Original	Print
Findings of Fact and Opinion of The Tax Court of the United States	80	79
Order of Redetermination, October 28, 1955	85	82
Order of The Tax Court of the United States amending Decision	86	82
Petition of May Seed and Nursery Company for review of Decision of The Tax Court of the United States	87	83
Points relied upon	88	84
Notice of filing of Petition for Review and Acknowledgment of Service	89	84
Amendment to Petition of May Seed and Nursery Company for review of Decision of The Tax Court of the United States	90	84
Notice of filing of Amendment to Petition for review and Acknowledgment of Service	91	86
Clerk's Certificate to Transcript	94	86
Order of The Tax Court of the United States extending Time to file Record on review	95	87

[fol. 1] Docket Entries

May Seed and Nursery Company, Petitioner,

Docket No. 50073 vs.

Commissioner of Internal Revenue, Respondent.

Appearances:

For Petitioner: Denver A. Busby, C.P.A., Robert J. Bannister, Esq.

For Respondent: Julian A. Breman, Esq.

1953

Aug. 12—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 13—Copy of petition served on General Counsel.

Aug. 12—Request for Circuit hearing in Chicago, Illinois filed by taxpayer. 9/2/53, Granted.

Sept. 30—Answer filed by General Counsel.

Oct. 6—Copy of answer served on taxpayer, Chicago, Illinois.

1954

Aug. 11—Hearing set November 29, 1954, Chicago, Illinois.

Nov. 29—Hearing had before Judge Raum, on the merits. Stipulation of facts filed at hearing. Petitioner's brief due 1/13/55. Respondent's brief due 2/14/55. Petitioner's reply brief due 3/7/55.

Dec. 23—Transcript of hearing 11/29/54 filed.

1955

Jan. 10—Brief filed by taxpayer. Copy served on respondent by petitioner. (See letter).

Feb. 14—Answer brief filed by General Counsel.

Mar. 15—Motion for leave to file the attached reply brief, brief lodged, filed by taxpayer. 3/21/55 Granted.

Mar. 23—Copy of motion and reply brief served on General Counsel.

Sept. 29—Findings of fact and opinion filed, Raum, Judge. Decision will be entered for the respondent. 9/29/55 Copy served.

Oct. 28—Decision entered, Judge Raum, Div. 11.

Nov. 30—Petition for review by United States Court of Appeals, Eighth Circuit, filed by petitioner.

Dec. 1—Proof of service filed.

Dec. 12—Appearance of Robert J. Bannister as counsel filed.

Dec. 12—Designation of contents of record with acknowledgment of service thereon filed by petitioner.

Dec. 23—Order extending time to February 28, 1956 for filing the record and docketing the appeal, entered.

1956

Jan. 5—Amendment to petition for review filed by petitioner.

Jan. 5—Proof of service of amendment to petition for review filed.

[fol. 2]

Jan. 13—Motion for leave to file joint motion to vacate decision entered October 28, 1955 and to enter a new decision in accordance with stipulation, joint motion to vacate decision lodged, filed by respondent.

Jan. 13—Stipulation as to deficiency lodged.

Jan. 16—Motion for leave to file joint motion to vacate decision entered October 28, 1955 and to enter a new decision in accordance with stipulation, granted, joint motion to vacate decision filed by respondent.

Jan. 16—Stipulation as to deficiency filed.

Jan. 16—Order amending decision entered, Raum, Judge, Div. 11.

[fol. 3] (Petition of May Seed and Nursery Company)

(Received and Filed August 12, 1953, The Tax Court of the United States.)

The Tax Court of the United States

May Seed and Nursery Company, Petitioner,

Docket No. 50073 vs.

Commissioner of Internal Revenue, Respondent.

The above named petitioner hereby petitions for a redetermination of the deficiency and overassessment as set forth by the Commissioner in his letter dated and mailed May 15, 1953, ADC-AP:St.P-Omaha:EPM, a copy of which is attached as Exhibit "A" and made a part of this petition.

1. The petitioner, an Iowa corporation with its principal office at Shenandoah, Iowa, filed its return for the fiscal year 1942 in the Collection district at Des Moines, Iowa.

2. The Commission determined a deficiency in income tax of $9,730.18 and an overassessment of Excess Profits tax of $31,387.69 for the fiscal year ended June 30, 1942. The amount of the overassessment of Excess Profits tax computed under the law is $38,569.48 and the resulting deficiency in income tax is $11,956.53. The net amount in controversy is $4,955.44.

3. The determination of tax liability set forth in the Commissioner's letter of May 15, 1953 was based upon the following error:

The failure and refusal to allow an unused excess-profit tax credit for the fiscal year 1941, computed under the provisions of Sec. 722 of the Internal Revenue Code, to be carried forward to the fiscal year 1942 as provided by law.

[fol. 4] 4. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The petitioner is a corporation organized under the laws of the state of Iowa on January 1, 1919 and has